
(2013) 01 MAD CK 0034

In the Madras High Court

Case No : Criminal A. (MD) . No. 188 of 2007

S. Singaram and Others

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 2 LW(Cri) 93 : (2013) 2 MLJ(Cri) 727

Hon'ble Judges : S. Nagamuthu, J;M. Jaichandren, J

Bench : Division Bench

Advocate : V.S. Ramalingam, for the Appellant; A. Ramar, Additional Public Prosecutor, for the Respondent

Judgement

S. Nagamuthu, J.—The appellants are the accused in S.C. No. 76 of 2006, on the file of the learned Additional Sessions Judge (Fast Track

Court), Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal. The case of the prosecution, in brief, is

as follows:

The deceased, in this case, was one Chithirakannu. In respect of a land dispute between the first accused-S. Singaram and P.W. 2-V. Govindan,

there had been a long standing enmity between these two families. The deceased-Chithirakannu was a supporter of P.W. 2. P.W. 1 and P.W. 3 to

P.W. 7 are either relatives of P.W. 2 or close family friends. In other words, the prosecution party, viz., P.W. 1 to P.W. 7 belonged to one faction

in the village. The accused party belonged to the other faction, opposed to the prosecution party. The factional rivalry was due to the above land

dispute between the first accused and P.W. 2.

1.1. While so, according to the case of the prosecution, on 15.8.2005, at about 6.00 a.m., in front of one tea shop of Muthu, all these nine

Pudukkottai. Altogether, there were nine accused. By Judgment dated 16.2.2007, the Trial Court acquitted the accused Nos. 4 to 7 and 9 and

convicted these appellants under various penal provisions, as detailed below:

accused gathered in an unlawful assembly. The accused 1 to 4 and 6 to 9 were all armed with deadly weapons. To be precise, the first accused

was armed with an iron bar, the second accused was armed with a crowbar, the third accused was armed with a sickle, the fourth accused was

armed with a stick, the sixth accused was armed with a sickle, the seventh accused was armed with a stick, the eighth accused was armed with a

sickle, the ninth accused was armed with a sickle and the fifth accused was not armed with any weapon. The object of the said unlawful assembly

was to commit the murder of the deceased-Chithirakannu and to cause injuries on P.W. 5 to P.W. 7.

1.2. At that time, the deceased came to the tea shop to have tea. On seeing the deceased, the first accused directed the other accused to do away

with the deceased. Immediately, the second accused attacked the deceased with crowbar on his head. The deceased fell down. The third

accused-M. Rengasamy attacked the deceased on his right cheek with crowbar. The fourth accused-P. Selvam attacked the deceased with a stick

on his back and the eight accused attacked him with sickle on his both legs. In the same occurrence, the first accused attacked P.W. 6 with iron

rod on her head. The sixth accused attacked P.W. 6 with sickle on her head and caused a simple hurt. The seventh accused attacked P.W. 7 with

stick on her left hand and caused simple hurt. The deceased succumbed to the injuries instantaneously. The other injured, except P.W. 1, were

taken to the Government Hospital at Pudukkottai. But, P.W. 1 went to the Karambakudi Police Station and preferred a complaint (vide Exhibit P-

1) in respect of the occurrence.

1.3. P.W. 21 was the then Sub-Inspector of Police, attached to the Karambakudi Police Station. On the basis of Exhibit P-1, he registered a case

in Crime No. 304 of 2005 under Sections 147, 148, 341, 324, 323 and 302 of the Indian Penal Code. Exhibit P-31 is the First Information

Report. Then, he forwarded the complaint, Exhibit P-1 and the First Information

Report Exhibit P-31 to the jurisdictional Magistrate and handed over the case diary to the Inspector of Police for investigation.

1.4. P.W. 22 was the Inspector of Police, attached to the Karambakudi Police Station. According to him, at 7.30 a.m., on 15.8.2005, when he was at Thirumanancheri Village, in connection with a prohibition ride, he received the First Information Report in the present case. Then, he proceeded to the place of occurrence at 8.00 a.m. and prepared an Observation Mahazer, Exhibit P-2 and a Rough Sketch, Exhibit P-32 in the presence of the witnesses. Then, he recovered bloodstained earth and sample earth from the place of occurrence in the presence of the same witnesses under Exhibit P-3, mahazer. On the same day, between 9.15 a.m. and 11.15 a.m., he conducted inquest on the body of the deceased and prepared Exhibit P-33, Inquest Report. Then, he forwarded the dead body for postmortem.

1.5. P.W. 12 was an Assistant Surgeon, attached to the Government Hospital, Pudukkottai. On 15.8.2005, at about 9.20 a.m., P.W. 4 - Rengasamy, appeared before him for treatment. He told P.W. 12 that he was attacked by four known persons with aruval and sticks. He noticed the following injuries:

1. Cut injury scalp 3 cm x 1 Cm
2. Laceration 1 x 1 cm left knee.
3. contusion left leg 3 x 3 cm
4. Contusion right hip 4 x 4 cm.

Exhibit P-17 is the Wound Certificate.

1.6. On 16.8.2005, at 10.00 p.m., P.W. 2 -Govindan appeared before him for treatment. He told P.W. 17 that he was attacked by four known persons with aruval and sticks. He noticed the following injuries:

1. sutured wound scalp.
2. Abrasion left shoulder.
3. Abrasion right shoulder.
4. Abrasion left knee.

Exhibit P-17 is the Wound Certificate.

1.7. On 15.8.2005, at about 9.15 p.m., P.W. 6, Yegambal appeared before him

for treatment. She told him that she was attacked by two known persons with aruval, stick and iron rod. He noticed the following injuries:

1. Cut injury scalp 1 cm x 1/2 cm.
2. Contusion left leg 2 x 4 cm.
3. Contusion right forearm 3 x 2 cm.
4. Contusion right hip 4 x 4 cm.

Exhibit P-19 is the Wound Certificate.

1.8. On the same day, at 9.10 a.m., P.W. 5 -Panneer appeared before him for treatment. He told P.W. 12 that he was attacked by four known persons with aruval and sticks at 6.00 a.m. at his village. He noticed the following injuries.

1. Cut injury scalp 6 x 2 cm scalp deep.
2. Cut injury scalp 3 x 1 cm x scalp depth.
3. Contusion left chest 4 x 4 cm.

Exhibit P-20 is the Wound Certificate. P.W. 12 opined that all the injuries sustained by all the injured persons were all simple in nature.

1.9. P.W. 19, Dr. K. Durairaj, conducted autopsy on the body of the deceased at 3.30 p.m., on 15.8.2005. He noticed the following injuries:

1. A contusion with swelling and abrasion in front of right leg size 2 cm radius.
2. A lacerated injury 2 X 1 X 1 cm in the middle of left leg.
3. A deep cut injury on the angle of the mandible size 2 X 2 X 3 cm right side.
4. A deep cut injury vertical in nature extending from the frontal region to the anterior aspect of inter parietal region size 5 X 3 X 5 cm.
5. Skull bone fracture was present due to deep cut injury. The fracture has extended from frontal region to parietal region.

Exhibit P-30 is the Postmortem Certificate. He opined that the deceased would appear to have died of severe cut injury to head, which caused

fracture of skull bone and damage to the brain tissue, hemorrhage, shock and death. He further opined that the death would have occurred 16 to

20 hours prior to the postmortem.

1.10. P.W. 22 continued the investigation. He examined all the injured persons and recorded their statements. On 15.8.2005, at 1.00 p.m., near

Manjuviduthi bus stop, P.W. 22 arrested the accused Nos. 1 to 4 and 8. On such

arrest, the first accused gave a voluntary confession in the presence of P.W. 10 and another witness. In the said confession, he disclosed the place, where he had hidden the crowbar, (M.O. 1). The second accused gave a voluntary confession at 1.30 p.m. in the presence of the same witnesses, in which he disclosed the place, where he had hidden crowbar (M.O. 2). The third accused gave a voluntary confession at 2.00 p.m., in which he had disclosed the place, where he had hidden the crowbar (M.O. 3). At 2.30 p.m., the fourth accused gave a voluntary confession, in which he disclosed the place, where he had hidden the stick, (M.O. 6). At 3.40 p.m., the eighth accused gave a voluntary confession, in which he disclosed the place, where he had hidden M.O. 7, aruval.

1.11. In pursuance of the said respective disclosure statements, the accused took the police and the witnesses to the respective places and produced the weapons. They were all recovered under mahazars. Then, on 16.8.2005, at 8.45 p.m., P.W. 22 arrested the fifth accused at

Surakkadu bus stop. On such arrest, she gave a voluntary confession in the presence of P.W. 15 and another witness. In the said confession, she

disclosed the place, where she had hidden the stick. At 8.00 p.m., P.W. 22 arrested the seventh accused. On such arrest, the seventh accused

gave a voluntary confession, in which he had disclosed the place, where he had hidden the sticks. In pursuance of the said respective disclosure

statements, the accused took the police and the witnesses to the respective places and produced the weapons. They were all recovered under

mahazars. On 17.8.2005, at 4.45 p.m., P.W. 22 arrested the sixth accused near Thirumanancheri Arch in the presence of P.W. 16 and another

witness. On such arrest, he gave a voluntary confession, in which he had disclosed the place, where he had hidden aruval. At the same time, he

arrested the ninth accused-Chidambaram. On such arrest, at 4.00 p.m., he gave a voluntary confession, in which he disclosed the place, where he

had hidden the aruval. Based on the above respective confessions, the accused took the police and the witnesses to the respective places and

produced the weapons and they were all recovered under mahazars.

1.12. P.W. 22 gave a request to the Court to forward the weapons for chemical examination. Exhibit P-52 is the Chemical Analyst Report.

According to the said report, no bloodstain was found in any of the weapons

seized from the accused. Finally, on completing the investigation,

P.W. 22 laid charge sheet against the accused.

2. Based on the above materials, the Trial Court framed appropriate charges against the accused. All the accused pleaded innocence, and

therefore, they were put on trial. In order to prove the charges, on the side of the prosecution, as many as twenty two witnesses were examined

and fifty three documents were exhibited, besides twenty one Material Objects. Out of the said witnesses, P.W. 1 to P.W. 7 are the eye-witnesses

to the occurrence, more particularly, P.W. 2 to P.W. 7 are the injured eye-witnesses. When the above incriminating materials were put to the

accused u/s 313 of the Code of Criminal Procedure, they denied the same as false. However, they did not choose to examine any witness on their

side. But, they exhibited four documents on their side. Having considered the above materials, the Trial Court acquitted the accused Nos. 4 to 7

and 9 from all the charges and convicted these accused Nos. 1 to 3 and 8 alone under various penal provisions, as detailed in the first paragraph of

this Judgment. That is how, the appellants are now before this Court with this Criminal Appeal.

3. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor for the State and also perused the records carefully.

4. The learned counsel appearing for the appellants would submit that Exhibit P-1, the First Information Report, would not have been come into

being at 7.00 a.m., on 15.8.2005, as it is alleged by the prosecution. He would further submit that from the materials available on record, it could

be inferred that Exhibit P-1 would have been concocted by the prosecution party with the concurrence of P.W. 22, the Inspector of Police, who

was present in the village at the time when the alleged occurrence had taken place. The learned counsel would further submit that since the entire

village was in two factions and since P.W. 1 to P.W. 1 are all witnesses, belonging to one fraction and as the accused party are inimical towards

them, the possibility of foisting a false case against the accused by fabricating the First Information Report cannot be overruled. Thus, according to

the learned counsel, because Exhibit P-1 is a concocted document and since there are number of accused in this case, the entire case of the

prosecution should be viewed with suspicion and eventually, the same should be rejected.

5. The learned counsel would, nextly contend that the medical evidence, as spoken to by the doctor, who conducted autopsy on the body of the deceased, does not corroborate the eye-witness account at all. He would point out that the two injuries found on the deceased were clear cut wounds. The fatal blow was allegedly caused by the second accused by a blunt weapon. But, P.W. 19 has opined that the said injury would not have been caused by a weapon, like crowbar. Thus, according to him," the medical evidence does not corroborate the eye-witness account. He would further contend that the evidences of P.W. 1 to 5 are not in consonance with the charges framed against the accused. The overt acts as spoken to by these witnesses do not fall in line with the overt acts attributed to the accused in the charges. He would also submit that the non-examination of the said Muthu, Tea Shop Owner, in front of whose shop, the occurrence had taken place is fatal to the case of the prosecution.

6. He would further add that the two accused, viz., Accused Nos. 5 and 7 had sustained injuries in the same occurrence. But, the said injuries have not been explained away by the prosecution at all. He would also submit that the weapons said to have been recovered from these accused have not been identified by any of the prosecution witnesses. He would also submit that in no weapon, bloodstain was found. Therefore, according to the learned counsel, the prosecution has failed to prove the relevance between the weapons and the crime, and therefore, the disclosure statement said to have been made by the accused are not at all admissible in evidence. He would lastly contend that the Lower Court has disbelieved the evidences of these so-called eye witnesses in respect of the accused Nos. 4 to 7 and 9. When that be so, there are no reasons to act upon the evidences of these witnesses only in respect of these accused to hold that these accused guilty. At any rate, according to the learned counsel, the prosecution has not come forward with the true version of the occurrence, and therefore, the appellants are entitled for acquittal.

7. But, the learned Additional Public Prosecutor would vehemently oppose this Criminal Appeal. According to him, though P.W. 1 is not an injured eye-witness, his presence cannot be doubted at all. He would state that the presence of P.W. 1 at the place of occurrence has been duly

explained away by P.W. 1. The learned Additional Public Prosecutor would also submit that the presence of P.W. 2 to P.W. 7 at the place of occurrence cannot be doubted at all, since they are the injured eye-witnesses. According to him, these witnesses have clearly spoken to about the presence of these accused and their participation in the occurrence. Thus, according to the learned Additional Public Prosecutor, there are no reasons to reject the eye-witness account of P.W. 1 to P.W. 7. He would further submit that the First Information Report, in this case, is not a concocted document, because, within a short span of time of the occurrence, the First Information Report was registered and the same had reached the Court. Thus, according to the learned Additional Public Prosecutor, there is prompt lodging of the First Information Report, which ensures the truthfulness of the contents of the same. He would further add that though it is true that the evidences of these witnesses have been disbelieved in respect of the rest of the accused, it does not warrant that their evidences should be rejected in respect of these accused as well.

8. Here, according to the learned Additional Public Prosecutor, the Lower Court was able to separate the grain from the chaff, and thus, implicit reliance could be attached to the evidences of the eye-witnesses against some of the accused alone. He would also submit that the medical evidences duly corroborate the eye-witness account and the so-called improbabilities pointed out by the learned counsel for the appellants are immaterial. He would further add that non-examination of the said Muthu, tea shop owner, is not fatal to the case of the prosecution, as there are overwhelming evidences to prove the charges through the evidences of P.W. 1 to P.W. 7. He would lastly contend that non-explanation of the injuries sustained by the accused Nos. 5 and 7 is not fatal to the case of the prosecution, as they did not go to the hospital immediately. In any view of the matter, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond all reasonable doubts against these accused, and therefore, the Judgment of the Trial Court does not require any interference at the hands of this Court.

9. We have considered the above submissions. According to the case of the prosecution, the alleged occurrence was at 6.00 a.m. on 15.8.2005.

Admittedly, the occurrence village was in two factions. The prosecution party belongs to one faction, whereas the accused party belongs to the

other faction. The reason for the fraction is a land dispute between the first accused and P.W. 2. Apart from the above, P.W. 1 to P.W. 7 are

either closely related to the deceased or family members of the deceased. Thus, P.W. 1 to P.W. 7 cannot be stated to be the independent witnesses.

10. In such view of the matter, as per the settled law, the evidences of P.W. 1 to P.W. 7 require very close scrutiny. In a case, where the

witnesses are partisan in character and highly interested in the prosecution case, and more particularly, when there are number of accused and

number of injured witnesses, the Courts do expect prompt lodging of the First Information Report. In other words, the prompt lodging of the First

Information Report, to some extent, guarantees the truth of the contents of the First Information Report.

11. In the case on hand, it is the contention of the learned counsel for the appellants that the First Information Report, in this case, would not have

come into being at 7.00 a.m. at all. In this regard, the learned counsel would submit that already in respect of an occurrence, which had taken

place in the same village, involving two groups of people, a case in Crime No. 303 of 2005 was registered by P.W. 22. The said First Information

Report (vide Exhibit D-3) was registered at 5.00 a.m., on 15.8.2005. The alleged occurrence in the said case, had taken place at 9.00 p.m., on

14.8.2005. Admittedly, in the said case, the distance between the place of occurrence and the Police Station is hardly eight kilometres. The

accused in the said case in Crime No. 303 of 2005 are many of the accused in the present case. Altogether, there were twelve accused in the said

case. P.W. 22 investigated the case in Crime No. 303 of 2005 and Exhibit D-4 is the Observation Mahazer prepared by P.W. 22 in Crime No.

303 of 2005, (vide Exhibit D-4). The said document clearly goes to show that it was prepared at the place of occurrence in Pattathikadu Village

on 15.8.2005 at 6.30 a.m..

12. When P.W. 22 was confronted with this document, during cross-examination, he has tacitly admitted that he was very much available in the

occurrence village at 6.30 a.m.. He has further stated, during cross-examination, that the distance between the place of occurrence in Crime No.

303 of 2005 and the place of occurrence in the present case was hardly one

kilometre. He has also stated that from Thirumanancheri village, he proceeded to the place of occurrence in Crime No. 303 of 2005, via the place of occurrence in Crime No. 304 of 2005. In Exhibit D-4, P.W. 4 had signed as a witness.

13. These documents, coupled with the evidence of P.W. 22, during cross-examination, would clearly go to indicate that P.W. 22 would have been available in the occurrence village late in the night of 14.8.2005 onwards. At any rate, at 6.00 a.m., he should have been available in the village. That is how, at 6.30 a.m., on 15.8.2005, he prepared the Observation Mahazer in Crime No. 303 of 2005. Thus, at the time when the alleged occurrence had taken place, P.W. 22 was very much available in the occurrence village. But, to the contrary, in chief-examination, he has stated that while he was in Thirumanancheri village in connection with the prohibition ride, he received the First Information Report in the present case and then, he reached the occurrence place at 8.00 a.m.. This version cannot be true. We hold that there are enormous materials available on record to ensure that P.W. 22 would have been present in the occurrence village at 6.00 a.m., on 15.8.2005. From this, we find some force in the said argument of the learned counsel for the appellants that Exhibit P-1 would have been preferred only in consultation with P.W. 22. In such view of the matter, we hold that Exhibit P-1 is a suspicious document.

14. Now, coming to the actual occurrence, the learned counsel has taken us, at length, through the evidences of P.W. 1 to P.W. 7. A close scrutiny of the above evidences would go to show that the overt acts spoken to by these witnesses do not fall in line with the overt acts attributed to the respective accused in the charges. Thus, the evidences of these eye-witnesses are not inconsonance with the charges.

15. Now, turning to the injuries on the deceased, P.W. 19, who conducted autopsy on the body of the deceased, had noticed as many as five external injuries. The injuries 3 and 4 are deep cut injuries. The fourth injury is a deep cut injury vertical in nature extending from the frontal region to the anterior aspect of inter parietal region size 5 X 3 X 5 cm. This injury is attributed to the second accused. It is the evidence of the witness that the second accused used a crowbar (M.O. 2) and using the same he attacked the deceased. It is not as though the second accused used any sharp

edged weapon. But, quite contrary to the said witness, the medical evidence says that the injury No. 4 was a deep cut injury. P.W. 19, during cross-examination, has categorically stated that the said injury would not have been caused by a weapon, like crowbar. He has given reasons for the said opinion as well. According to him, going by the clean cut, he was of the opinion that the said injury would have been caused only by a crowbar and not by any blunt object. Thus, the medical evidence is in complete conflict to the eye-witness account. The other injuries were allegedly caused by the accused 3, 4 and 8. According to the charges, the third accused attacked the deceased on his right chest with crowbar. The only injury found on the chest of the deceased is injury No. 3. It is again a deep cut injury. Certainly, this injury also would not have been caused by a crowbar. It is alleged that as per the charge, the fourth accused attacked the deceased with stick on the back of the chest of the deceased. But, correspondingly, there was no injury at all found on the back of the chest of the deceased. As per the charge, the eighth accused attacked the deceased with a sickle on both his legs. The injury No. 1 found on the left leg is a contusion. Thus, certainly, this injury would not have been caused by an aruval, which is a cutting instrument. The second injury is a lacerated injury found on the left leg. This injury, being a lacerated injury, would not have been caused by a weapon, like aruval, which is a cutting instrument. Thus, the medical evidence, as spoken to by P.W. 19, clearly contradicts the eye-witness account of P.W. 1 to P.W. 7. This creates enormous further doubt in the case of the prosecution.

16. The learned counsel for the appellants would, next, contend that the accused 5 and 7 also had sustained injuries in the very same occurrence.

Exhibit D-1 is the Wound Certificate, according to which, the fifth accused had sustained the following injuries:

1. A lacerated injury 2 x 1 x 1 cm right parietal region.
2. Contusion throat.
- 3.2 Abrasion in left forearm.

17. She told the doctor that she had sustained these injuries due to the attack made by the fifteen known persons on 15.8.2005 at 7.00 a.m. with aruval and stick. Similarly, the seventh accused had also sustained injuries. Exhibit D-2 is the Wound Certificate. He also told the doctor that he

was attacked by fifteen known persons with aruval and sticks on 15.8.2005, at 7.00 a.m.. According Exhibit D-2, the following were the injuries

found:

1. A lacerated injury 2 x 1 x 1 cm in left eyebrow.

2. Swelling of orbital region present.

18. According to the appellants, these injuries were sustained in the very same occurrence. P.W. 22, during cross-examination, has admitted that

he found injuries on the accused Nos. 5 and 7 at the time when he arrested them. But, it is the contention of the learned counsel for the appellants

that in respect of these injuries sustained by the accused, a complaint was given by the sixth accused-S. Mahendran. But, the same was

suppressed by P.W. 22. At any rate, we find that there is no explanation at all in respect of the injuries sustained by the accused Nos. 5 and 7.

19. It is the settled law that in a group clash, when the injuries sustained by the accused are not explained away, the possible inference is that the

prosecution witnesses, who have spoken to about the injuries sustained by the prosecution party, have not come forward with the true version of

the occurrence to speak about the injuries sustained by the accused also. Such witnesses cannot be believed. This is yet another reason why, we

are inclined to doubt the case of the prosecution.

20. In respect of the recoveries of the weapons at the instance of these accused on their respective statements, we find that they cannot have any

weightage at all in law. It is needless to point out that to make a disclosure statement relevant so as to be admitted in evidence u/s 27 of the Indian

Evidence Act, 1872, (for brevity, "the Act"), the relevancy between the facts discovered and the facts in issue should be established by the

prosecution. In other words, it is not the discovery of every fact, out of a disclosure statement made by the accused to the police that the said

statement becomes admissible u/s 27 of the Act. Per contra, if only the fact, so discovered, is a relevant fact, the disclosure statement will be

admissible u/s 27 of the Act. Such a relevancy can be established by many ways. To make such information relevant, what is required u/s 27 of the

Act, is that it should have a connection with the fact in issue.

21. In the case on hand, according to the Chemical Analyst Report, no bloodstain was found on any of the weapons recovered from the accused.

Similarly, no eye-witness has identified the weapons. Thus, the relevance between the weapon and the crime has not been established, and

therefore, the disclosure statements made by the accused are not at all relevant, and so, they cannot be considered at all. Thus, the recoveries of

the weapons from the respective accused also lose its importance and relevance.

22. Lastly, the learned counsel would submit that non-examination of the said Muthu, owner of a tea shop, is fatal to the case of the prosecution.

We find some force in the said argument. As we have pointed out already, when two groups, which are opposed to each other, are involved in an

occurrence, in order to find out the truth as to which version among the two projected by the rival parties is true, it is always desirable to get

independent witnesses to speak about the occurrence. It is a different matter, if no independent witness was available at the time occurrence. But,

in this case, it is in evidence that the said Muthu was very much present at the time of occurrence, because it is the case of the prosecution that the

deceased had gone to the shop of the said Muthu to have tea. Had Mr. Muthu been examined, some more light would have been thrown on the

truthfulness of the case of the prosecution. Thus, to some extent, the non-examination of the said Muthu is also fatal to the case of the prosecution.

23. Finally, the learned counsel submitted that these eye-witnesses have been rejected in respect of the other accused, except these appellants. It is

his contention that the Lower Court ought to have rejected the evidences of these witnesses in toto. In our considered view, simply because the

evidences of these witnesses are rejected in part in respect of certain accused, it does not warrant that the said witnesses should be rejected in toto

in respect of the rest of the accused as well. In a case, where it is possible to separate the grain from the chaff, there is no legal impediment to act

upon the said evidence, which is acceptable to the Court. But, at the same time, the said evidence should inspire the confidence of the Court. In

this case, it is the contention of the learned Additional Public Prosecutor that the Lower Court was able to find that the evidences of these

witnesses in respect of these accused are believable. But, we are not able to persuade ourselves to fall in line with the view taken by the Trial

Court. As we have pointed out already, there are lot of doubts, commencing from the lodging of the First Information Report. As we have already

narrated, the medical evidence is completely in contradiction to the eye-witness account. Apart from the above, evidence has not been let in tune

with the charges. In view of all the above, we find it difficult to act upon the evidences of these witnesses so as to convict these appellants alone.

Thus, we are impelled only to acquit these accused also. In the result, the conviction and sentence dated 16.2.2007 made in S.C. No. 76 of 2006,

imposed by the learned Additional District Judge and Fast Track Court, Pudukkottai, is set aside and the criminal appeal is allowed. The fine

amount, if any, paid by them shall be refunded. The bail bond executed by them shall stand discharged.